

STATE OF MICHIGAN  
COURT OF APPEALS

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CENTURY 21 TODAY, INC.,

Plaintiff-Appellee,

v

KURT TARRANT and TRACEY TARRANT,

Defendants-Appellants.

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UNPUBLISHED

October 28, 2003

No. 240696

Oakland Circuit Court

LC No. 01-031362-CK

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

PER CURIAM.

Defendants appeal as of right from an order granting in part and denying in part their motion for costs. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendants bought a home from Gary Stritmatter. Their original offer was rejected while Stritmatter had a listing agreement with plaintiff Century 21 Today, Inc. There was evidence showing that while the listing agreement was still pending, defendants and Stritmatter negotiated the terms of their deal. Specifically, the property had been inspected and appraised, defendants had applied for a mortgage listing the ultimate purchase price, they got a loan commitment, and defendants applied for title insurance. Plaintiff's claims against defendants for civil conspiracy and tortious interference with a contractual relation, business relationship and/or expectancy were dismissed on summary disposition. A jury then awarded plaintiff a verdict against Stritmatter.

Defendants sought to recover their attorney fees from plaintiff under MCR 2.405 based on a \$1.00 offer of judgment that was made shortly after the complaint was filed. The trial court denied the request "in the interest of justice," finding that it was de minimus and made with the intent to tack attorney fees to the costs in the event of success and not with the intent to actually settle. In *Stitt v Holland Abundant Life Fellowship (On Remand)*, 243 Mich App 461, 476; 624 NW2d 427 (2000), quoting *Luidens v 63<sup>rd</sup> Dist Court*, 219 Mich App 24, 35; 555 NW2d 709 (1996), this Court noted that the "interest of justice" exception would apply where a party employs gamesmanship by making "a de minimus offer of judgment early in a case in the hopes of tacking attorney fees to costs if successful at trial," and the party's objective is not settlement. A \$1.00 offer has little if any chance of seriously opening negotiations or of settling a case. It would therefore be hard to construe it as a genuine attempt at settlement. Accordingly, we find

no abuse of discretion. *JC Building Corp II v Parkhurst Homes, Inc*, 217 Mich App 421, 426; 552 NW2d 466 (1996).

Defendants also argue that the action was frivolous and that they should have been awarded attorney fees pursuant to MCR 2.114 and MCR 2.625. The trial court did not address this argument. However, in *Attorney General v Harkins*, \_\_\_ Mich App \_\_\_; \_\_\_NW2d \_\_\_ (Docket Nos 227720 / 232934, decided July 17, 2003), the Court held:

Sanctions are not required and should not be imposed merely because the court rejects the legal argument advanced by a litigant. Where, as here, there is no developed case law mandating a particular result, sanctions under MCR 2.114 and MCR 2.625 are not warranted. [Slip op at 7.]

Plaintiff's theory in this case was novel. No reported authorities had ever applied tortious interference with a contract or civil conspiracy against a complicit buyer in favor of the seller's realtor where the seller had attempted to avoid paying a commission. The trial court dismissed the tortious interference claim finding that plaintiff failed to allege or prove the intentional doing of a per se wrongful act or the intentional doing of a lawful act with malice and unjustified in law. Plaintiff had argued that this element was fulfilled, asserting that defendant's actions in setting up the sale before the listing agreement had expired "were, at a very minimum, unethical [in] that they undertook numerous affirmative acts as set forth herein that substantiated motives in aiding and assisting Defendant Stritmatter to avoid and breach his contractual relationship and/or business relationship with Plaintiff." Although a close question, we conclude that this was a good faith argument for the extension of existing law.

We affirm.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ Stephen L. Borrello